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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re MICHAEL FRANCIS de VRIES, on Habeas Corpus.	A125756 (Alameda County Super. Ct. No. 81051)

I.

INTRODUCTION

Petitioner Michael Francis de Vries (de Vries) was convicted of second degree murder on February 28, 1986, at the age of 41, for the 1984 shooting death of his second wife, from whom he was estranged. He was sentenced to an indeterminate state prison term of 17 years to life for this crime, making his earliest parole date June 4, 1995. On November 15, 2006, a two-commissioner panel of the California Board of Parole Hearings (Board) granted de Vries parole, but that decision was reversed by Governor Schwarzenegger on April 13, 2007, on the sole ground that the gravity of the life crime made de Vries's release an unreasonable public safety risk.

On November 20, 2008, then 64-year-old de Vries attended his ninth parole hearing (the 2008 Board hearing) before a different panel of the Board, which denied parole. This time, the Board cited two factors justifying the Board's conclusion that de Vries would pose a danger to the public if he were released from prison: (1) a lack of in-depth insight into his life crime, and (2) concern about his future relationships with women.

De Vries sought a writ of habeas corpus from the Alameda County Superior Court, which was denied. After he filed a petition for such a writ with this court, we issued an order to show cause.

We conclude that the Board's decision is not supported by "some evidence." (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 676-677 (*Rosenkrantz*).) Therefore, de Vries's petition for habeas corpus is granted, and the Board's November 20, 2008 order denying parole is vacated. The Board is ordered to find de Vries suitable for parole, unless at another hearing to be convened by the Board within 30 days of issuance of the remittitur, new evidence of parole unsuitability is presented. (*In re Rico* (2009) 171 Cal.App.4th 659, 689.)

II.

FACTUAL AND PROCEDURAL BACKGROUNDS

A. The Commitment Offense

The following account of de Vries's life crime is taken from the original probation department report filed May 21, 1986:

"On October 24, 1984, [de Vries] left a spousal support hearing. He had been ordered to pay $1500.00 per month to his estranged wife, Eileen [d]eVries, with that amount to be increased to $2500.00 per month upon the sale of a house they jointly owned. [De Vries] went to his Point Richmond home and then to Berkeley. He had a gun in his briefcase. It had been a birthday gift from Eileen ten years earlier. Eileen left the hearing and had lunch with her friend, Ann Juell. She then went to Berkeley to keep an appointment with her therapist, Jesse Miller.

"[De Vries] saw Eileen in her car at a Berkeley intersection. He followed her to the Berkeley Therapy Institute. He then removed his gun from his briefcase and followed her inside. Two witnesses apparently saw [de Vries] at the door, knees bent, arms extended and both hands holding the gun. Once inside, he pursued the screaming victim up a flight of stairs firing several shots at her. She locked herself in a kitchen area. [De Vries] broke down the door and fired three shots into her body, mortally wounding her."

B. The 2008 Board Hearing

De Vries appeared at the parole hearing represented by counsel, who advised the Board that de Vries was electing not to discuss the facts relating to the life crime; an election recognized by Board regulations.[1] Instead, much of the hearing focused on de Vries's participation in various programs**,** including numerous self-help programs, especially in the areas of anger management and domestic violence.

De Vries's parole plans were also discussed. He is married, having met his current wife while in prison. His wife is retired and owns her fully paid home in Sonora, where de Vries will reside. Offers of employment have already been extended to de Vries by companies involved in graphic arts in the Sonora area. Numerous letters from individuals and businesses supportive of de Vries's release were also reviewed.

De Vries was asked about his relationship with the victim before committing his life crime. Although he refused to discuss this topic on the advice of counsel, excerpts from the 1996 parole hearing transcript were read indicating that de Vries had admitted to "five occasions" of physically assaulting the victim, including slapping her twice, and once grabbing her by the hair and throwing her on a couch.

After hearing testimony from de Vries and several other witnesses, and listening to arguments by the district attorney and counsel for de Vries, the Board announced its decision finding de Vries not suitable for parole. The presiding commissioner commented that de Vries had not "done the kind of work [developing insight into why he committed his life crime] that we think you may have done, but we didn't get a sense about it, and I'll just give you an example." As an example, the commissioner pointed out that while de Vries was an accomplished artist, his art did not include any human

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[1] "The facts of the crime shall be discussed with the prisoner to assist in determining the extent of personal culpability. The board shall not require an admission of guilt to any crime for which the prisoner was committed. *A prisoner may refuse to discuss the facts of the crime in which instance a decision shall be made based on the other information available and the refusal shall not be held against the prisoner.* Written material submitted by the prisoner under [section] 2249 relating to personal culpability shall be considered." (Cal. Code Regs., tit. 15, § 2236, italics added.)

figures. However, the commissioner went on to acknowledge that the most recent "psych report" concluded that he had "fair insight into areas of concern for this evaluation." Nevertheless, the commissioner concluded that in reviewing the extensive record, the psychological reports were not in-depth enough in describing what insight de Vries had developed about his crime, and "[w]e're not getting a sense that you really looked into it as deeply or you have the grasp of what you did as thoroughly as we'd like to see."

In support of this conclusion, the presiding commissioner noted that de Vries divorced his third wife in the early 1990's while he was in prison, and then married his current wife "within a very short period of time." He referred to the breakup of de Vries's second marriage as "difficult," noting that, although the commissioner did not know if any allegations in the record were true, there were some claims of the second wife[2] stealing money from de Vries, and "some allegations that you had roughed her up at one of the visits." From this, the commissioner concluded, without reference or further explication, that it represented "the same kind of pattern."[3] The second commissioner expressed concern about de Vries's relationships with women outside of the prison setting, and what kind of "understanding you have."[4]

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[2] According to the record before us, de Vries is currently married to his fourth wife. He murdered his second wife, and married his third and fourth wives while in prison. Although the commissioner referenced the "second marriage" and "second wife," we believe those references were to de Vries's third wife.

[3] Apparently, de Vries's third wife reported on March 30, 1993, that he had assaulted her during a family visit in prison five and one half months earlier on October 16, 1992. The alleged incident was investigated by the California Department of Corrections (CDC). The investigator noted that the assault allegation was made after de Vries had filed for a divorce, and three months after the complainant (his third wife) had discovered that he had been writing to another woman while incarcerated. The investigator concluded that "there is insufficient information/evidence that inmate de Vries physically assaulted Ms. [d]e Vries as alleged in her memorandum."

[4] The commissioners referenced briefly the nature of the life crime in deciding to make the parole denial only one year. However, the circumstances of the life crime were not raised as a ground upon which de Vries was found not suitable for parole.

C. 2008 Report Submitted for Current Parole Review

A "Psychological Evaluation Addendum" by Sara Bowerman, Ph.D., a contract evaluator for the CDC, was prepared by Dr. Bowerman following her May 30, 2008 evaluation of de Vries and submitted for the Board's consideration at the 2008 Board hearing. Under "Current Mental Status," Dr. Bowerman noted that de Vries had obtained a high school diploma in 1962, but had exhibited extreme motivation to further his education while he was incarcerated, which included his earning multiple Associate of Arts degrees through Crestline Community College in business, mathematics, English and human services. In addition, he also earned three Bachelor of Arts degrees—a degree through San Jose State University in social studies; a degree in general studies, and a degree in agriculture.

All aspects of de Vries's appearance, affect, and mental functioning appeared to be normal. As noted, Dr. Bowerman concluded that he showed "fair insight into the areas of concern for this evaluation." He also "demonstrated fairly good awareness and insight into the potential problems" faced by a parolee reentering society.

The report noted that de Vries works as a clerk in the Native American/Jewish chapel. He has also participated in a number of self-help programs over the years, including active involvement in "Correctional Learning Network's Victim Awareness, Dispute Resolution, Stress Management, Communications, Anger Management, and 'Healing of Men Everywhere.' " In addition to his involvement as a participant in these programs, de Vries designed a domestic violence program for prisoners.

De Vries also attended an educational group, "Human Service 100," and availed himself of whatever mental health groups were available to general population prisoners even though he was not part of the Mental Health Services Delivery System (MHSDS). Similarly, although there is no evidence that de Vries has any history of alcohol or substances abuse, he attended Alcoholics Anonymous meetings.

De Vries did discuss his life crime with Dr. Bowerman, expressing his guilt and remorse. He also stated that all of his actions since his arrest and incarceration have been

attempts at making amends. Dr. Bowerman affirmed that de Vries's actions well matched his words about making amends.

Dr. Bowerman concluded that "[t]here are no current mental health concerns relating to this inmate." She noted that de Vries had no arrests or criminal history prior to being arrested for his life crime. He has achieved a high level of functioning and impulse control since his incarceration, evinces self-restraint, and has been free from any physical altercations while in prison.

Dr. Bowerman further concluded that de Vries presented low risk of potential violent conduct "in a free community." This was confirmed by his score on the "HARE Psychopathy Checklist-Revised," which measures "predominantly static (unchanging) risk factors for future violence," where he placed in the lowest (best) two percent of those inmates taking the assessment. Thus, Dr. Bowerman concluded that de Vries's test score indicated there were "minimal concerns for future risk of dangerous behavior."

Moreover, Dr. Bowerman found that de Vries displayed very few of the predictive factors for recidivism. The low risk of future violent behavior if released was also supported by his involvement in, and commitment to, self-help work, his "good level of insight," and family support.

As part of her assessment, Dr. Bowerman also reviewed prior psychological evaluations dating back to 2002 (the current assessment being de Vries's 10th). She

noted that a 2006 report by Dr. John Rekert[5] concluded that de Vries was a below average risk for possible future dangerousness, and that "the gains made in prison will likely be retained if paroled. The inmate has worked hard and continues to work hard in the areas of self-help and self development. He has an earnest desire to be a better person."

Dr. Rekert's 2006 report followed his evaluation in 2002, in which Dr. Rekert opined that an earlier "Phase of Life Problem" was no longer in evidence. De Vries's obsessive compulsive personality disorder showed improvement, and there was "no current support or symptomotology for this diagnosis." Dr. Bowerman quoted from Dr. Rekert's 2002 report as follows: " 'It appears that he, in his earlier life, had some problems with general adjustment and as he states too, "has some personality problems", such as dependency, that caused him to be vulnerable to an explosive episode that ended in the death of Eileen, the victim. He appears genuinely remorseful and has done, it appears, everything possible while at DVI [Deuel Vocational Institution] to improve himself, both vocationally, educationally, and psychologically. It also appears that the psychological factors of his personality that directly affected the committing offense have improved dramatically through his hard work.' "

[5] Apparently, Dr. Rekert's 2006 report was the basis for the Board's November 2006 decision to grant de Vries parole. That same report was reviewed by Dr. Steven Walker, senior psychologist for the Board's Forensic Assessment Division, in advance of the 2007 parole hearing. Dr. Walker concluded from his review that Dr. Rekert's 2006 assessment "is valid and the opinions are empirically and behaviorally anchored." Walker's review found further support for the validation of Dr. Rekert's 2006 report "by the fact that the evaluation included clarification of known factors relating to violence risk assessment, including areas touching on history of violence (none before life crime), compliance with treatment and BPH [Board of Parole Hearings] requests, substance abuse (none currently diagnosed), mental health issues (inmate not in MHSDS), *insight*, remorse, institutional programming (included no CDC-115s since 1990 and none related to violence, prosocial involvement in Straight Life program, college classes, history of volunteer efforts, and self help programming), demographic issues (63 years old, married 14 years), and risk management issues (including family support, viable vocational plans and varied work skills)." (Italics added.)

Dr. Bowerman also reviewed a 2005 report by Dr. Gregory Girtman,[6] which Dr. Bowerman found to be "extremely positive and supportive of this inmate." She then quoted from Dr. Girtman's report as follows: " 'He is clearly remorseful for this crime, and has thought about and explored how he could have done something like this. *He has developed good insight into this murder*, and does not try to blame anyone or anything else . . . . He appears to have matured and grown during his years in prison and has taken advantage of virtually all that DVI and outside agencies have to offer, in an effort to improve himself and get past his past jealousy, dependency, and self-centeredness—he appears to have been very successful. His risk to the community appears to be much lower than average compared to other parolees, and even compared to people who have never been incarcerated. He has spent more time than most people (inmate or not) exploring the causes of what he did, and actively working to change himself.' " (Italics added.)

D. Other Prior Psychological Evaluations

The first psychiatric evaluation of de Vries following his imprisonment for his life crime was contained in a short report dated July 13, 1989, by Dr. Shelly James. After discussing the life crime with the inmate, and conducting a mental status exam, Dr. James concluded that de Vries represented a risk of future violence less than that of the average inmate.

A psychiatric evaluation was next performed on June 9, 1992, by Dr. George Gross, before de Vries became legally eligible for parole. This examiner met with de Vries and reviewed his CDC file, concluding that he suffered from an adjustment disorder and "NOS with paranoid, schizoid, and obsessive compulsive traits." Dr. Gross commented that, while de Vries expressed guilt and remorse about the life crime, "[o]ne

[6] Dr. Girtman's 2005 report was reviewed by senior psychologist Dr. John Raniseski. This report is even more laudatory of de Vries from a risk assessment perspective than Dr. Girtman's January 2004 report, in which he found de Vries to be "obvious[ly] remorse[ful]," not the "same person who he was when he committed this most heinous of crimes," and represented a lower than average risk to the community if released. This 2004 report was also signed by chief psychologist Dr. Edward Hoppe.

is impressed in the interview with his attempt to say what would be pleasing to the examiner and this is a part of his tremendous concern about how well he is getting along in the world and what he is going to do. He is quite out of touch with his feelings, even though this comes through with an almost heavy sense of anxiety as the interview progresses.." No risk assessment was made as part of Dr. Gross's report.

Dr. Richard Obrochta evaluated de Vries in 1994, again before de Vries was eligible for parole. Near the outset of the report, Dr. Obrochta referred to petitioner's lengthy presentence probation report, which Dr. Obrochta found to be very damaging to de Vries's "case," and noted that he worked hard to "gain a neutral perspective, i.e., somewhere in the middle of the biases exhibited by the Probation Report and the subject's recount of events."[7]

He noted that de Vries is highly intelligent, with an IQ of 126. Dr. Obrochta related that de Vries's relationships with women have not been successful, noting that he

[7] The probation report referenced was filed with the trial court by Alameda County Deputy Probation Officer Richard Pankopf following de Vries's conviction in 1986. Near the end of the lengthy report, the probation officer expressed the belief the de Vries was "shrewd and devious," "manipulative" and a person who would use his education in prison "to obtain an early parole. For the unwary, he has the ability to make himself look very good." At the end of the report, the author offered a further opinion concerning the subject's character: "Vigilance and care is of utmost importance to guard against allowing [de Vries] to draw the shades over thorough analysis and sound judgment with regard to the decision to release him from custody. [De Vries's] pursuit of his wife up a flight of stairs firing shots at her as she fled screaming into the kitchen area locking the door behind her and his breaking down of that door immediately firing three shots into her body, killing her, should NEVER be allowed to fade from memory. There is an ever present danger that with the passing of time and [de Vries's] subsequent efforts to ingratiate himself with correctional workers, therapists, and other custodial staff . . . could result in a pile of documents attesting to his excellent prison adjustment that may overwhelm reviewers of his care materially skewing the elements of the decision making process." (Original capitalization and underscoring.)

was then in his fourth marriage.[8] The examiner concluded that de Vries had a "Phase of Life Problem" and an "Obsessive Compulsive Personality with Narcissistic Features," in addition to his past marital problems.

No risk assessment was offered by Dr. Obrochta in his 1994 report, although he noted as part of his conclusions that de Vries has "deep-rooted problems in establishing homeostasis in his intimate relationships, e.g., marital; insight is obstructed by rationalization, denial and intellectualization ego defenses."

In accordance with Dr. Obrochta's recommendation in his 1994 report, de Vries thereafter underwent two years of one-on-one psychotherapy sessions with Dr. Obrochta, as well as cognitive group therapy sessions, until he was evaluated again in 1996, this time by Dr. Michael Morris.[9] The conclusions reached by Dr. Morris as a result of his mental status examination of de Vries included that de Vries exhibited no psychotic symptomatologies, including paranoid ideations. Dr. Morris found de Vries to have "good to excellent" insight, with excellent judgment and impulse control. "He appears to be a very giving person."

After discussing the various educational and self-help programs in which de Vries has participated, and his life crime, during which de Vries demonstrated "great insight," Dr. Morris concluded that de Vries was "seem[ed] to have improved since the last Board report." In response to Dr. Gross's earlier opinion that de Vries seemed to be trying to please the examiner by his comments, Morris observed: "There was no evidence found by this examiner of manipulative behavior [de Vries] seems to be very forthright in requesting what he wants and needs and there is no dishonesty attached to it."

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[8] The report described the belated claim of physical abuse made de Vries's third wife, noting that after a "very thorough hearing" the charges were "totally dropped as unfounded." The report records that de Vries described his current fourth marriage as "great."

[9] A short report authored by Dr. Obrochta in March 1997 discussed the extent and success of therapy in which de Vries participated for the period 1994-1997. He noted that "[t]he prognosis for [de Vries], in terms of development of self and adjustment to life, is viewed as excellent."

Dr. Morris's "Conclusions" include the following opinions: "Over the last year and a half to two years, [de Vries] appears to have made great psychological gains. . . . He is involved in numerous self-help groups and therapy which has given him a better understanding of himself, his commitment offense, and his goals for his life. These psychological gains are considered to be permanent and stable as he would be able to maintain them and continue to grow in a less structured environment such as the community. His potential for violence in the community is considered to be below average for the general prison population."

Under "Recommendation," Dr. Morris included the following comment: "When this inmate does his requisite number of years on his sentence, it is recommended that he be given a parole date as he would be a great asset to the community in which he chooses to live."

A fifth report to the Board was submitted in August 1998, this time by Dr. Roger Kotila. Dr. Kotila found de Vries to be suffering from no mental illness, and that he "appears to take appropriate responsibility for his actions." Under the "Discussion" section of his report, the examiner notes the highly positive report by Dr. Morris, as well as the "skeptical" probation report submitted to the trial court following de Vries's conviction. In response, Dr. Kotila concluded: "The present Examiner is inclined to believe that the changes in de Vries are more than just skin deep, although the improvements may not be quite as thorough as Dr. Morris postulated, but nevertheless are heading in the right directions: less sociopathic, less driven, more aware and more mature. It can now be said that he has a fairly good insight into the ways of his thinking and how they affect his actions." The conclusion is that violence potential is now below average as compared to other inmates.

III.

DISCUSSION

A. Legal Principles Guiding Review of Parole Denials

The Board's parole decisions are governed by Penal Code section 3041. Pursuant to statute, the Board "shall normally set a parole release date" one year prior to the

inmate's minimum eligible parole release date, and shall set the date "in a manner that will provide uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public . . . ." (Pen. Code, § 3041, subd. (a).) Subdivision (b) of Penal Code section 3041 provides in relevant part that a release date must be set "unless [the Board] determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed at this meeting."

"Accordingly, parole applicants in this state have an expectation that they will be granted parole unless the Board finds, in the exercise of its discretion, that they are unsuitable for parole in light of the circumstances specified by statute and by regulation." (*Rosenkrantz*, *supra*, 29 Cal.4th at p. 654; see also *In re Smith* (2003) 114 Cal.App.4th 343, 366 ["parole is the rule, rather than the exception"].)

Section 2402 of title 15 of the California Code of Regulations (section 2402)[10] sets forth various factors to be considered by the Board in carrying out its duties under Penal Code section 3041. These factors are designed to guide the Board's assessment of whether the prisoner poses "an unreasonable risk of danger to society if released from

[10] All further undesignated section references are to title 15 of the California Code of Regulations.

prison," and thus whether he or she is suitable for parole. (§ 2402, subd. (a).)[11] Section 2402 also lists factors that show suitability or unsuitability for parole.[12]

In *Rosenkrantz*, our Supreme Court set forth the appropriate standard of review. "[T]he judicial branch is authorized to review the factual basis of a decision of the Board denying parole in order to ensure that the decision comports with the requirements of due process of law, but that in conducting such a review, the court may inquire only whether some evidence in the record before the Board supports the decision to deny parole, based upon the factors specified by statute and regulation. If the decision's consideration of the specified factors is not supported by some evidence in the record and thus is devoid of a factual basis, the court should grant the prisoner's petition for writ of habeas corpus and should order the Board to vacate its decision denying parole and thereafter to proceed in

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[11] These factors include "the circumstances of the prisoner's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the prisoner's suitability for release. Circumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability." (§ 2402, subd. (b).)

[12] Unsuitability factors include: (1) a commitment offense done in an "especially heinous, atrocious or cruel manner"; (2) a "[p]revious [r]ecord of [v]iolence"; (3) "a history of unstable or tumultuous relationships with others"; (4) "[s]adistic [s]exual [o]ffenses"; (5) "a lengthy history of severe mental problems related to the offense"; and (6) "[t]he prisoner has engaged in serious misconduct in prison or jail." (§ 2402, subd. (c)(1)-(6).) This subdivision further provides that "the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel." (§ 2402, subd. (c).)

Suitability factors are: (1) the absence of a juvenile record; (2) "reasonably stable relationships with others"; (3) signs of remorse; (4) a crime committed "as the result of significant stress in [the prisoner's] life"; (5) battered woman syndrome; (6) the lack of "any significant history of violent crime"; (7) "[t]he prisoner's present age reduces the probability of recidivism"; (8) "[t]he prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release"; and (9) the prisoner's "[i]nstitutional activities indicate an enhanced ability to function within the law upon release." (§ 2402, subd. (d)(1)-(9).)

accordance with due process of law. [Citations.]" (*Rosenkrantz, supra,* 29 Cal.4th at p. 658.)

Recently, in *In re Lawrence* (2008) 44 Cal.4th 1181 (*Lawrence*), the California Supreme Court provided further guidance to the Board, the Governor, and to courts in considering their respective decisions affecting parole. *Lawrence* clarified the law pertaining to parole denials by emphasizing that "[i]t is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness to the public." (*Id*. at p. 1212.) Accordingly, in exercising its discretion, the Board "must consider all relevant statutory factors, including those that relate to postconviction conduct and rehabilitation. [Citation.]" (*Id*. at p. 1219.) *Lawrence* cautions that due consideration "requires more than rote recitation of the relevant factors with no reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision—the determination of current dangerousness." (*Id*. at p. 1210.) Stated another way, not only must there be some evidence to support the Board's factual findings justifying parole unsuitability, there must be some explanation of how such findings make the prospective parolee a current unreasonable risk of danger to public safety.

While the "some evidence" standard necessarily requires substantial deference to Board decisions, the standard of judicial review of parole decisions "certainly is not toothless." (*Lawrence, supra*, 44 Cal.4th at p. 1210.) "[I]n light of the constitutional liberty interest at stake, judicial review must be sufficiently robust to reveal and remedy any evident deprivation of constitutional rights. If simply pointing to the existence of an unsuitability factor and then acknowledging the existence of suitability factors were sufficient to establish that a parole decision was not arbitrary, and that it was supported by 'some evidence,' a reviewing court would be forced to affirm any denial-of-parole decision linked to the mere existence of certain facts in the record, even if those facts have no bearing on the paramount statutory inquiry. Such a standard, because it would leave potentially arbitrary decisions of the Board or the Governor intact, would be

incompatible with our recognition that an inmate's right to due process 'cannot exist in any practical sense without a remedy against its abrogation.' [Citations.]" (*Id.* at p. 1211, quoting *Rosenkrantz*, *supra*, 29 Cal.4th at p. 664.) Accordingly, under the "some evidence" standard of review, if this court does not find that the Board set forth some reliable evidence demonstrating that de Vries's parole currently poses an unreasonable risk of danger to public safety, we must set aside the Board's decision. (*Lawrence*, *supra*, 44 Cal.4th at pp. 1191, 1210.)[13]

B. Review of the Board's 2008 Denial of Parole

As noted, the Board denied parole based on its judgment that de Vries would be a danger to society if released because he lacked adequate insight into what caused his life crime and its concern about his "pattern" of misconduct involving women. We discuss these factors in turn.

1. Lack of Insight

Lack of insight can be probative of an inmate's current risk to public safety. (*In re Shaputis* (2008) 44 Cal.4th 1241, 1260; see also *Lawrence*, *supra*, 44 Cal.4th at p. 1228 ["In some cases, such as those in which the inmate . . . has shown a lack of insight or remorse, the aggravated circumstances of the commitment offense may well continue to provide 'some evidence' of current dangerousness even decades after commission of the offense"].)

In reviewing the transcript of the current parole hearing, it is evident that the Board members merely intoned the conclusory phrase "lack of insight," without offering

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[13] In numerous published cases, the Courts of Appeal have applied the legal principles set out in *Lawrence* in reversing decisions by the Governor and the Board based on the lack of an articulated nexus between the factors used to deny parole and the petitioner's current dangerousness. (See *In re Singler* (2008) 169 Cal.App.4th 1227, 1230-1231; *In re Burdan* (2008) 169 Cal.App.4th 18, 38-39; *In re Aguilar* (2008) 168 Cal.App.4th 1479, 1488-1491; *In re Vasquez* (2009) 170 Cal.App.4th 370, 381-387; *In re Gaul* (2009) 170 Cal.App.4th 20, 39-40; *In re Palermo* (2009) 171 Cal.App.4th 1096, 1112; *In re Rico*, *supra*, 171 Cal.App.4th at pp. 686-687; *In re Ross* (2009) 170 Cal.App.4th 1490, 1513; *In re Lazor* (2009) 172 Cal.App.4th 1185, 1203; *In re Dannenberg* (2009) 173 Cal.App.4th 237, 255-256.)

any explanation of what was lacking, or referencing anything in de Vries's record supporting the conclusion. For example, one of the members simply concluded, without any elucidation that "[w]e're not getting a sense that you really looked into it as deeply or you have the grasp of what you did as thoroughly as we'd like to see." What did he mean? How was the record lacking? The only example offered to support the statement that de Vries lacked insight into his crime was one Board member's flippant comment that de Vries' artwork lacked human figures.

To the contrary, since de Vries first became legally eligible for parole**,** all the record evidence unequivocally supports the opposite conclusion. Not only did the evaluation report prepared for the 2008 Board hearing state that de Vries possess "fair insight" into "areas of concern for th[e] evaluation," but every psychological evaluation since 1995, commented that he had good to excellent insight into the causes for the life crime he committed, was remorseful, accepted his guilt, and was sincere in his desire to make amends for what he did.

This case is a far cry from the facts in *Shaputis*, in which the Supreme Court opined that lack of insight might be an indicator of future dangerousness. In that case, although the evidence indicated that Shaputis had intentionally killed his wife, he consistently claimed that the shooting was an accident. The Supreme Court concluded that "the Governor's reliance on [Shaputis's] lack of insight is amply supported by the record—both in [Shaputis's] own statements at his parole hearing characterizing the commitment offense as an accident and minimizing his responsibility for the years of violence he inflicted on his family, and in recent psychological evaluations noting [Shaputis's] reduced ability to achieve self-awareness." (*In re Shaputis*, *supra*, 44 Cal.4th at p. 1260, fn. 18.)

Unlike *Shaputis*, the record here simply does not support the conclusion that de Vries "has failed to gain insight or understanding into either his violent conduct or his commission of the commitment offense." (*Shaputis*, *supra,* 44 Cal.4th at p. 1260.) The psychological assessments, particularly those authored since de Vries became eligible for parole in 1995, are replete with descriptions of de Vries's apparently sincere feelings of

guilt, remorse, and narratives in which de Vries acknowledges his former psychological shortcomings that created the state of mind leading to the murder of his former wife.

2. Future Dangerousness to Women

The Board also denied parole on the ground that de Vries represented a future danger to women if released on parole. In so concluding, the Board referenced the fact that de Vries has been married four times, and that the breakup of his first prison marriage in 1992 was "difficult," in that it included allegations that he "roughed up" his third wife during a prison visit.

As we have noted, de Vries's third wife reported in 1993 that he had assaulted her five and one-half months earlier during a family visit in prison in October 1992. The CDC investigation of the alleged incident determined that there was insufficient evidence. Thus, this allegation could not form a factual basis for a conclusion that de Vries had a recurring history of violence towards women. Moreover, surely having married unsuccessfully several times alone is no predictor of future dangerousness to women. In any case, this now-65 year-old prisoner has been in a stable, long-term marriage of more than 15 years, which he has described as "great." Thus, there is not "some evidence" supporting a conclusion that he has a "pattern" of abusing women, and would constitute a public safety risk to females if released.

Again, the record is to the contrary. Not one psychological evaluation performed since de Vries began his incarceration has concluded that he represents a threat to women. In fact, beginning with his first evaluation in 1989, six years before de Vries first became eligible for parole, and continuing up to his most recent assessment, every mental health professional who has evaluated him has concluded that he is, at least, a below average risk of future dangerousness to *anyone.*

Except for his life crime, de Vries has never been arrested for any criminal violation, much less for any act of violence. Although he received two disciplinary reports early in his period of imprisonment, as Dr. Bowerman noted, he has never engaged in any physical altercations while in prison. The list of self-help programs in which de Vries has participated over a period of more than 20 years is impressive, and we

note too that de Vries has designed a program for prisoners to help them cope with domestic violence issues, which the institution apparently currently uses.

To summarize, we have reviewed the record and conclude it lacks "some evidence" supporting the finding that de Vries lacks adequate insight into the causes of his life crime, or that he has engaged in a pattern of abuse towards women. In addition to the absence of some evidence establishing these risk factors, there is also a concomitant lack of "some evidence" supporting the Board's conclusion that de Vries represents a present danger to the public if he is released on parole. For these reasons, the Board's decision must be vacated.

IV.

DISPOSITION

De Vries's petition for habeas corpus is granted, and the Board's November 20, 2008 order denying parole is hereby vacated. The Board is ordered to find de Vries suitable for parole, unless at another hearing to be convened by the Board within 30 days of issuance of the remittitur, new evidence of parole unsuitability is presented. (*In re Rico, supra,* 171 Cal.App.4th at p. 689.)

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RUVOLO, P. J.

We concur:

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REARDON, J.

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SEPULVEDA, J.